

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN ROBERT DEMOS, JR.,

Plaintiff,

v.

JULIE MARTIN, DOC Secretary;
DONALD HOLBROOK, State
Penitentiary Superintendent; KECIA
RONGEN, ISRB Chairperson; and
ROBERT HERZOG, DOC Director of
Prisoner Operations,

Defendants.

NO: 4:20-CV-5062-TOR

ORDER DISMISSING ACTION

BEFORE THE COURT are Plaintiff's Second Amended Complaint and Second Application to Proceed *In Forma Pauperis*. ECF Nos. 37, 38. Plaintiff, a prisoner at the Washington State Penitentiary ("WSP"), is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

Plaintiff's Second Application to Proceed *In Forma Pauperis* is denied as moot. Plaintiff was granted *in forma pauperis* status on June 22, 2021. ECF No. 15.

1 As a general rule, an amended complaint supersedes the original complaint
2 and renders it without legal effect. *Lacey v. Maricopa County*, 693 F.3d 896, 927
3 (9th Cir. 2012). Therefore, “[a]ll causes of action alleged in an original complaint
4 which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814
5 F.2d 565, 567 (9th Cir. 1987) (citing *London v. Coopers & Lybrand*, 644 F.2d 811,
6 814 (9th Cir. 1981)), *overruled in part by Lacey*, 693 F.3d at 928 (any claims
7 voluntarily dismissed are considered to be waived if not repud). Furthermore,
8 Defendants not named in an amended complaint are no longer defendants in the
9 action. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

10 Consequently, all previously named Defendants; Jay Inslee, Governor of the
11 State of Washington, Robert Ferguson, State Attorney General, Jane Doe, DOC
12 Director of Infectious Disease Control, Jane Doe, State House of Representatives
13 Speaker of the House, John Doe, State Senate Majority Leader, George Marlton,
14 DOC Contract Attorney, John Doe, DOC WSP Correctional Officer, John Doe, WSP
15 DOC Shift Lieutenant, Lynn Clark, WSP Former Captain of the Guards, Karen
16 Forss, WSP Medical Supervisor, John Doe, DOC Chief of Medical Operations,
17 William Frank John Smith, WSP Medical Doctor, Manuel Louis Santana, WSP
18 Correctional Officer, John Doe, WSP Business Manager, John Doe, WSP Mailroom
19 Supervisor, John Doe, WSP Food Manager, Gary Pierce, WSP Disciplinary
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1 Hearings Officer, Rochelle Stephens, WSP Legal Liaison, and Steve Sinclair, DOC
2 Secretary, have been terminated from this action.

3 Liberally construing the Second Amended Complaint in the light most
4 favorable to Plaintiff, the Court finds that it fails to cure all the deficiencies of the
5 prior complaints and does not state a claim upon which relief may be granted.

6 Plaintiff asserts that the four remaining Defendants refused to exercise their
7 supervisory powers to enforce COVID-19 protocol. ECF No. 37 at 5. He accuses
8 them of failing to strictly enforce the social distancing and mask wearing mandate.
9 *Id.* at 8. These allegations, combined with Plaintiff's speculations that he may have
10 contracted various infections and his mental reservations about receiving the
11 COVID-19 vaccine, do not state a claim that Defendants Martin, Holbrook, Rongen
12 or Herzog have violated his constitutionally protected rights.

13 Plaintiff claims that he has been threatened with "retaliation" or the denial of
14 parole "should [he] refuse to submit to being vaccinated for Covid-19." ECF No.
15 37 at 7. He does not support his claim of retaliation with any factual allegations. To
16 the extent that Plaintiff is challenging the duration of his confinement, a civil rights
17 case is not the appropriate vehicle for doing so. *See Preiser v. Rodriguez*, 411 U.S.
18 475, 487-90 (1973); *Heck v. Humphrey*, 512 U.S. 477, 481 (1994).

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ACCORDINGLY, IT IS HEREBY ORDERED:

1. Plaintiff's Second Application to Proceed *In Forma Pauperis*, ECF No. 38, is **DENIED** as moot.
2. This action is **DISMISSED without prejudice** to Plaintiff filing any challenge to the fact or duration of his confinement in the appropriate forum.
3. Under *Washington v. L.A. Cty. Sheriff's Dep't*, 833 F.3d 1048 (9th Cir. 2016), this dismissal will NOT count as a "strike" pursuant to 28 U.S.C. § 1915(g).
4. Plaintiff shall file nothing further in this action other than a Notice of Appeal to the Ninth Circuit Court of Appeals.
5. Plaintiff's *in forma pauperis* status is hereby **REVOKED**.
6. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith and would lack any arguable basis in law or fact.

The Clerk of Court is **DIRECTED** to enter this Order, enter judgment, provide copies to Plaintiff and **CLOSE** the file.

DATED July 30, 2021.



Thomas O. Rice
THOMAS O. RICE
United States District Judge